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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 13, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE990786

Ex Parte: In the matter concerning  
Rules implementing the State  
Corporation Commission's authority  
to enforce the Underground  
Utility Damage Prevention Act

ORDER ESTABLISHING INVESTIGATION AND INVITING COMMENTS

The Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia ("the Act"), was revised effective January 1, 1995, among other reasons, to reduce damage significantly to underground utility lines, and prevent possible loss of life, injuries, inconvenient service interruptions, damage to the environment, and economic losses resulting from damage to these underground lines. As revised, the Act streamlines communications between operators (owners of underground lines), the notification centers ("Miss Utility") that advise utilities of plans to dig, and excavators, regarding whether the underground utility lines have been located. The revised Act defines exemptions and emergencies, and provides for penalties for violations of its provisions

resulting from the failure to exercise reasonable care. See  
§ 56-265.32 A of the Code of Virginia.

Section 56-265.30 of the Code of Virginia charges the State Corporation Commission ("Commission") with enforcing the provisions of the Act. It authorizes the Commission to promulgate any Rules or regulations necessary to implement the Commission's authority to enforce the Act.<sup>1</sup>

Pursuant to the statutory authority granted to it by the Act in 1994, the Commission adopted Rules for the Enforcement of the Underground Utility Damage Prevention Act.<sup>2</sup> Since that time, the Commission, its Division of Energy Regulation ("Staff"), and the Advisory Committee have gained considerable experience in the enforcement of the Act, and, through interaction with operators, excavators, the notification centers, contract locators, and the public, recognize that the Commission's

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<sup>1</sup> Many of the operators who are subject to the Act are also public utilities and cooperatives subject to our regulatory authority under Chapter 1 (§ 56-1 et seq.), Chapter 9 (§ 56-209 et seq.), Chapter 10 (§ 56-232 et seq.), Chapter 10.1 (§ 56-265.1 et seq.), Chapter 10.2:1 (§ 56-265.13:1 et seq.), Article 3 (§ 56-478.1 et seq. of Chapter 15), Article 4 (§ 56-484.1 et seq. of Chapter 15), Article 5 (§ 56-484.4 et seq. of Chapter 15), Chapter 16 (§ 56-485 et seq.), and Chapter 19 (§ 56-531 et seq.) of Title 56 of the Code of Virginia.

<sup>2</sup> See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules necessary to implement the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act, Case No. PUE940071, 1994 S.C.C. Ann. Rept. 422 (Order Adopting Procedural Rules for Enforcement of the Underground Utility Damage Prevention Act, Dec. 20, 1994).

currently effective Rules should be revised, expanded, and clarified.

The Commission, therefore, is initiating this proceeding to assist it in developing appropriate policies, Rules and regulations applicable to operators, excavators, contract locators, and notification centers, as those terms are defined by § 56-265.15 of the Act. This Order seeks public comment on a variety of issues identified in Appendix A hereto, including the Commission's authority to adopt specific regulations concerning the identified issues.

Comments concerning the issues set out in Appendix A should be specific, detailing the roles to be played by the Commission, utility operators, and other participants affected by the Act. To the extent possible and practicable, interested parties should include with their responses to this Order, proposed Rules and regulations corresponding to their comments on the issues set forth in Appendix A to the Order. Such concrete proposals will assist the Commission in accomplishing the goals of this proceeding.<sup>3</sup>

Following a thorough review of any responses and comments received herein, including a review of any suggested Rules and regulations, the Staff will propose specific Rules and

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<sup>3</sup> To aid the Commission, each request for comments is lettered and numbered in Appendix A. Interested parties are requested to correlate their responses to the lettering and numbering system set forth in this Order in their comments.

regulations under the Act, and we will seek further public comment on Staff's proposals, and conduct further proceedings herein.

Accordingly, we are of the opinion and find that this matter should be docketed; that notice of this rulemaking should be published in major newspapers of general circulation throughout the Commonwealth and that this Order should also be published in the Virginia Register of Regulations; that interested persons should be afforded an opportunity to file written comments concerning the issues identified in Appendix A to this Order; and that the Staff should file a report responding to the comments filed herein and proposing appropriate revisions to the Rules.

Accordingly, IT IS ORDERED THAT:

- (1) This matter be docketed and assigned Case No. PUE990786.
- (2) Interested persons may obtain a copy of this Order, together with a copy of the issues upon which comment is sought (Appendix A hereto), by directing a request in writing for the same on or before January 12, 2000, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218.
- (3) A copy of this Order and the issues identified in Appendix A hereto shall also be made available for public review at the Commission's Document Control Center, located on the

first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m.

(4) Interested parties wishing to file comments concerning the issues identified in Appendix A shall file an original and five (5) copies of such comments in writing on or before February 29, 2000, with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE990786.

(5) On or before December 30, 1999, the Commission's Division of Energy Regulation shall cause the following notice to be published as classified advertising on one occasion in major newspapers of general circulation throughout the Commonwealth and shall forward the following notice to the Virginia Register of Regulations:

NOTICE OF INVESTIGATION AND RULEMAKING BY  
THE STATE CORPORATION COMMISSION FOR THE  
ENFORCEMENT OF THE UNDERGROUND UTILITY  
DAMAGE PREVENTION ACT  
(THE MISS UTILITY ACT),  
CASE NO. PUE990786

The Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia ("the Act") was revised effective January 1, 1995, among other reasons, to reduce damage to underground utility lines and prevent possible loss of life, injuries, inconvenient service interruptions, damage to the environment, and economic losses

resulting from damage to underground utility lines.

On December 20, 1994, the Virginia State Corporation Commission ("Commission") adopted Rules for the Enforcement of the Underground Utility Damage Prevention Act ("Rules") in Case No. PUE940071, pursuant to the authority granted to it in § 56-265.30 of the Code of Virginia. These Rules affect utilities, notification centers, contract locators, and the public generally. The Commission has become aware of the need to clarify, expand, and revise these Rules, and accordingly, the Commission is soliciting comments on how these Rules should best be revised.

A copy of the Order Establishing Investigation and Inviting Comments, together with the issues upon which comment is sought, may be reviewed from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center, located at 1300 East Main Street, Tyler Building, First Floor, Richmond, Virginia 23219. Interested persons may obtain a copy of the Commission's Order, together with the issues upon which comment is sought (Appendix A to the Order) by directing a written request for a copy of same on or before January 12, 2000, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, and referring to Case No. PUE990786.

Any person who wishes to comment upon the issues identified in Appendix A to the Commission's Order Establishing Investigation and Inviting Comment shall file an original and five (5) copies of such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia

23218, on or before February 29, 2000, and shall refer to Case No. PUE990786.

All written communications to the Commission regarding this proceeding shall refer to Case No. PUE990786, and shall be directed to Joel H. Peck, Clerk of the Commission, at the address set forth above.

DIVISION OF ENERGY REGULATION OF  
THE STATE CORPORATION COMMISSION

(6) On or before April 7, 2000, the Division of Energy Regulation shall file a report summarizing and responding to the comments received herein, and proposing appropriate revisions to the Rules. The Division of Energy Regulation shall mail a copy of said report to all parties of record.

(7) On or before February 8, 2000, the Division of Energy shall file with the Clerk of the Commission proof of the publication of the notices required herein.

**I. Reporting of Probable Violations of the Underground Utility Damage Prevention Act ("the Act")**

- A.1. The jurisdictional gas companies regulated by the Commission are required under the Commission's pipeline safety regulations to report all probable violation impacting their facilities. The Commission seeks comments on the following: Should some type of reporting requirements be established for all operators of underground utility lines? Please explain your response.
2. Should there be a damage or impact threshold for investigation of reports relative to non-gas operators?
3. If so, what should be the "threshold" for each type of the following operators:
- a. Electric utilities;
  - b. Telecommunications;
  - c. Cable television;
  - d. Water;
  - e. Sewer.
- B. Rule 20 VAC 5-309-20 of the Rules for Enforcement of the Underground Utility Damage Prevention Act ("Rules") also states "[a]ll probable violations shall be reported to the division within 30 days of a person becoming aware of the circumstances constituting the probable violation." Should this rule be revised to require persons to report probable violations promptly upon discovery of the probable violation?
- C. Rule 20 VAC 5-309-40 B states that "[i]n the event that the staff but not the [Advisory] committee recommends enforcement action, the staff shall report to the commission the committee's recommendation and reason or reasons therefor." Should this rule be revised to enable the Director of the Division of Energy Regulation to review the Staff's and the Committee's recommendations and pursue settlement with the person alleged to have committed the violation?



## **II. Marking of Underground Utility Lines**

- A.1. Are additional marking standards necessary to help minimize damage and better protect the public?
2. Please provide comments and propose standards with respect to the following:
  - a. Marking adequacy;
  - b. Marking intervals;
  - c. Different types of markings for different terrain, site conditions, excavation types, etc.;
  - d. Dimensions of a straight mark by paint;
  - e. Letter designation code for each type of utility line;
  - f. Dimensions, etc., of a marking stake;
  - g. Dimensions, etc., of a marking flag;
  - h. The minimum number of marks to mark a utility line;
  - i. Marking of valve box covers;
  - j. Marking of newly constructed facilities in a marked excavation area;
  - k. Marking of abandoned utility lines;
  - l. Marking of customer-owned utility line, how and by whom the customers should be informed;
  - m. Frequency of marks
    - (i) when crossing other utility lines;
    - (ii) when paralleling other utility lines;
    - (iii) for other situations;

- n. Marking beyond the boundaries of the specific location of the proposed excavation; please comment on how far, if at all, marks should exceed the boundaries of the specific location for the proposed excavation;
- o. Marking in registered historic areas; please comment on the appropriate methods that should be used when marking utility lines in registered historic areas;
- p. Marking on driveways, etc.; please comment on whether driveways, sidewalks, etc. should be marked differently. If so, explain how they should be marked;
- q. How long markings are valid; please comment on the appropriate length of time markings should be valid;
- r. Procedures to mark for an emergency excavation; Comment on what procedures should be regarded as appropriate for marking of utility lines in response to an emergency excavation;
- s. Marking of two or more utility lines of the same type in the same trench; Comment on how two or more utility lines of the same type should be marked in the same trench;
- t. Use of records, maps, etc., to mark utility lines; Comment on how records, maps, and other documents should be used to mark underground utility lines;
- u. Marking of large pipelines; Comment on how large gas, hazardous liquid, water, and sewer pipelines should be marked;
- v. Marking of major and/or safety sensitive utility lines; Comment on how major utility lines such as fiber plant should be marked;
- w. Marking of duct structures, conduit systems, etc.; Comment on how duct structures and conduit systems should be marked;

- x. Requirements of offset markings; Comment on what you regard as appropriate requirements for offset markings of utility lines; Comment on when such markings should be used;
  - y. Requirements to keep records of markings; Comment on what you regard as appropriate records of markings that should be prepared and kept by the operator or locator;
  - z. Information contained in records of markings; Comment on what information should be contained in records of markings;
  - aa. Should operators or locators be required to have procedures for investigation of all damages to their underground utility lines and complaints and shall take remedial actions to prevent recurrences of such problems?
  - bb. Requirements to keep records of markings when investigating a damage to a utility line. Comment on the appropriate records and the information an operator or locator should prepare and keep as a result of investigating a damage to their utility line.
- B. What standard(s) should be used to certify locators? Should locators be re-qualified annually or at some other interval of time?
- C. What standards should be developed with respect to operator and locator written plans addressing locating workload fluctuations?

**III. Excavators' Issues**

- A. What should be considered hand digging? Should use of air knives, vacuum excavator, jackhammers, and other similar tools be considered hand digging?
- B. What should be considered adequate hand digging around marked utility lines? Should it be two feet on both sides of the mark?
- C. Should the excavator report mismarked facilities directly to the operator?
- D. Should excavator be required to call 911 for damage to certain utility lines? If so, for what type of damages should an excavator be required to call 911?
- E. Section 56-265.24 A of the Code of Virginia requires excavators to take all reasonable steps necessary to properly protect, support and backfill the underground utility lines. What are the reasonable steps an excavator should be required to take in order to properly protect, support, and backfill underground utility lines?
- F. What are the reasonable precautions an excavator should take in order to properly protect the underground utility lines when conducting an emergency excavation?
- G. More and more utilities are installed using trenchless techniques such as boring. What are the reasonable steps an excavator shall take when conducting trenchless excavation?
- H. Who should be responsible for the protection and preservation of markings at an excavation site?
- I. Should excavators be limited to call in only a certain number of notice of excavations (ticket) per day? If so, how many?
- J. Should the size of ticket be defined? If so, how?
- K. Should excavators be required to conduct thorough site inspections to determine adequacy of marks before they begin excavation?

**IV. Operators' Issues**

- A. Locating nonmetallic utility lines. Nonmetallic underground utility lines cannot be located with some of the locating equipment. Should there be requirements to make all new nonmetallic lines locatable?
- B. Notification centers use utility line data from facility operators to inform the operators if a proposed excavation is in close proximity to their facilities. How often should operators update the data provided to the notification centers?
- C. Accurate records are essential to mark the underground utility lines:
  - 6. Should operators be required to prepare and maintain reasonably accurate installation records of their underground utility lines?
  - 7. Should their records indicate if all or a portion of the utility line has been abandoned?
- D. Which utility services should be considered essential public service as that term is used in the definition of "Emergency" in § 56-265.15 of the Code of Virginia?
- E. Repair of damage to which type of utility lines should be considered emergency as defined in § 56-265.15 of the Code of Virginia.
- F. Should operators be required to call the notification center before they "bar hole" for leak survey or other purposes?
- G. Should operators be required to call the notification center if they must hand dig to locate their underground utility line?

**V. Notification Center Issues**

- A. The notification centers currently use a set of codes and subcodes for the operation of the Ticket Information Exchange ("TIE") System. Should this Commission formally recognize these codes and subcodes in any rules it adopts?
- B. If an operator responds to the TIE System by a subcode, should that operator be responsible to directly inform the excavator?

- C. Should the TIE System be "locked up" at a certain time after the original notification to prevent changing responses by the operator or locator to the TIE? How long after the original notification should the TIE System be locked up to prevent changing responses?
- D. Should notification centers process requests by planners and designers for marking of utility lines? What procedures should be used for the processing of requests by planner and designers for marking of utility lines?
- E. Should notification centers process requests for meetings between the excavators and operators for the purpose of discussing locating facilities on large or complex jobs? What procedures should be used to process such requests?
- F. Should notification centers provide users the means to permit remote data entry for operators, locators, and excavators?

## **VI. General Issues**

- A. Section 56-265.24 C of the Code of Virginia requires the excavator to make an additional call to the notification center if the excavator has observed "clear evidence of the presence of an unmarked utility line." Should any of the following be considered clear evidence of an unmarked utility line:
  - 1. Visual evidence, such as a gas meter;
  - 2. Faded marks from previous markings;
  - 3. Clear knowledge of the presence of a utility line; and
  - 4. Other evidence. Please describe.
- B. Should all or any part of the damage prevention information collected by the Division of Energy Regulation be provided to any persons requesting such information?

- C. Are there any other issues that you would like the Commission to consider? Please provide a detailed description of these issues. State why they should be considered and propose any rules that may address each issue.
- D. Comment on whether the Commission's authority to promulgate rules to enforce the provisions of the Underground Utility Damage Prevention Act permits the Commission to adopt specific regulations relating to each of the questions set out above. Set out all legal authority supporting your response as well as detailed comments concerning the merits of adopting specific regulations on each of the foregoing issues.